

**MEMORANDUM OF AGREEMENT BETWEEN  
STATE OF KANSAS DEPARTMENT OF CORRECTIONS [KDOC]  
AND COLBY COMMUNITY COLLEGE [CCC]  
AND COLBY ADULT EDUCATION [CAE]**

This agreement is made by and between the Kansas Department of Corrections [KDOC] and Colby Community College [CCC] and Colby Community College Adult Education [CCCAE].

WHEREAS, the KDOC, as part of the criminal justice system, contributes to the public safety by, among other things, actively encouraging and assisting offenders through job readiness and educational programming to become law-abiding citizens; and,

WHEREAS, consistent with that mission, CCC and CCCAE have pursued and been awarded grant funds from the Adult Education and Family Literacy Act [AEFLA]; and,

WHEREAS, KDOC has identified CCC is qualified and experienced in the provision of effective and relevant educational, career, and technical training services for offenders designated in the aforementioned grant;

NOW, THEREFORE, in consideration of the terms and conditions herein contained, it is hereby mutually agreed and covenanted among the undersigned parties as follows:

**1. TERM AND TERMINATION**

- a. This Agreement shall be deemed effective and in full force from July 1, 2013 through June 30, 2014, subject to annual extensions so long as the grant project lasts. Either party without cause may terminate this Agreement by providing the other party with thirty (30) days advance notice of such termination.
- b. Notwithstanding any other provisions herein, if either party defaults in the performance of any of the terms or conditions of the Agreement, the defaulting party shall have thirty (30) days after receipt of written notice of such default within which to cure such default.
- c. If the defaulting party fails to cure the default within such period of time, then the remaining (non-defaulting) party shall have the right to terminate this Agreement by written notice.

**2. RESPONSIBILITIES OF KDOC**

- a. Based on departmental policies and protocols, KDOC shall provide CCC with the facility and offender access at Norton Correctional Facility (NCF) necessary to provide the services agreed upon herein.
- b. KDOC shall provide CCC all necessary information and training related to departmental policies and protocols in order for CCC staff to comply with same.
- c. KDOC shall pay reimburse CCC for actual costs incurred in providing NCF offenders GED testing, not to exceed \$5,000 for the full term of this 1-year agreement, including specifically the cost of an examiner's time and travel.
  - i. CCC shall submit a monthly invoice to KDOC by emailing the invoice to [PatB@doc.ks.gov](mailto:PatB@doc.ks.gov), [MargieP@doc.ks.gov](mailto:MargieP@doc.ks.gov) and [Jayme.Todd@doc.ks.gov](mailto:Jayme.Todd@doc.ks.gov), by the 10<sup>th</sup> of the month. The invoice shall itemize the specific costs incurred.

KDOC shall pay the invoice by the last business day of the month in which it is submitted.

**3. RESPONSIBILITIES OF CCC**

- a. CCCAE will provide enhanced skills and academic educational services including academic improvement, work and life skills, and GED preparation and testing for those NCF inmates who meet the target population identified through the AEFLA grant.
- b. CCC Outreach will provide credit bearing classes (must meet required class numbers) for inmates who are able, on a voluntary basis, to pay tuition in a variety of subjects, including but not limited to Beginning Algebra, Intermediate Algebra, Speech, and business courses.
- c. CCC will utilize certified instructors in providing Colby Community College credit classes and Adult Education noncredit skill enhancement courses, and meet industry-recognized best practices for education.
- d. CCC will provide staffing and other needed materials to implement the services required by the AEFLA grant.
- e. CCC will be responsible for following all KDOC and NCF policies and procedures as taught through NCF staff development.
- f. CCC will assure GED testing services are available, covering the costs of the testing fees through inmate pay, community contributions, or as a last resort accessing the \$5,000 fund provided under this agreement.

**4. STATUS OF THE PARTIES**

Nothing herein is intended to create the relationship of joint venture, partner, employee or agent and principal, of any party to the other, or any right to govern or control the operations of the other party. Each party shall be and remain independent and responsible for its own acts and those of its own employees. Each party shall be solely responsible for the payment of all salaries, wages, withholding and benefits of its own employees.

**5. RECORDS/PROPERTY**

- a. All student records prepared by CCC for college credit courses shall become property of CCC.
- b. All information provided to CCCAE by KDOC in connection with the AEFLA grant shall remain the property of KDOC.
- c. All student records prepared by CCCAE shall become the property of CCCAE.
- d. All materials and equipment purchased by the AEFLA grant remain the property of CCCAE.

**6. MISCELLANEOUS**

- a. This Memorandum of Agreement constitutes the sole and only Agreement between the parties regarding the subject matter referenced herein, and correctly sets forth the rights, duties and obligations of each party as of the date hereof. This agreement supersedes all previous agreements between these parties, including the agreement dated October 1, 2011.
- b. This Memorandum of Agreement may not be modified or amended except by written instrument signed by the parties hereto. No term or condition of the Memorandum of Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of the Memorandum of Agreement except by written instrument of the party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall

operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

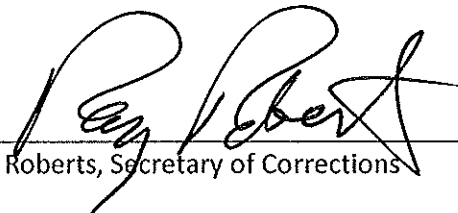
- c. This Memorandum of Agreement is made in the State of Kansas and shall be controlled by the laws of the State of Kansas in all matters of interpretation.
- d. Neither party to this Memorandum of Agreement shall prohibit or prevent the Legislative Division of Post Audit from having access pursuant to K.S.A. 46-1101 *et. seq.*, to any records, documents, or other information -- confidential or otherwise -- regarding or relating to the execution and/or performance of the Memorandum of Agreement.
- e. All notices, requests, demands and other communications required or permitted herein to be in writing shall be deemed to have been duly delivered if delivered in person or sent by registered or certified, first class mail, postage prepaid to:

KDOC: Chief Legal Counsel, 900 S.W. Jackson, 4th Floor, Topeka, KS 6612-1284


CCCAE: Nance Munderloh, Adult Education Director, Colby Community College, 1255 South Range, Colby KS 67701

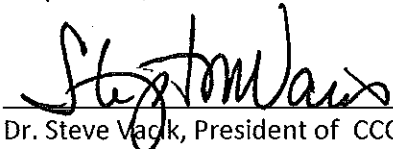
CCC: Troy Bielser, Outreach Director, Colby Community College, 1255 South Range, Colby, KS 67701

**IN WITNESS HEREOF**, the parties hereto shall assign its rights or duties herein without the prior written consent of the remaining parties.

 Date: 7-16-13  
Ray Roberts, Secretary of Corrections

 Date: 6.20.13  
Nance Munderloh, Director of CCCAE

 Date: 6/20/13  
Troy Bielser, Director of CCC Outreach

 Date: 25 June 2013  
Dr. Steve Vack, President of CCC

## Attachment A

State of Kansas

Department of Administration

DA-146a (Rev. 6-12-KDOC)

### CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 04-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1st day of July, 2013.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due to Lack of Funding Appropriation or Budget Rescission or Allotment:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. If, in the judgment of the Secretary of the state agency party, as a result of a budget rescission ordered by the Governor, or a budget allotment ordered by the Secretary of Administration, insufficient funds remain to support the function performed in this agreement and for payment of charges hereunder, State may terminate this agreement upon giving 30 days' written notice. In the event of termination due to any circumstance set forth above, Contractor shall have the right to take possession of any equipment provided State under the contract, upon the effective date of termination. State will pay to the contractor all regular contractual payments incurred up to the effective date of termination, plus contractual charges, if any, incidental to the return of any such equipment. Upon termination of the agreement by the State, title to any such equipment shall revert to the contractor upon the effective date of termination. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement

## **PREA CONTRACT AMENDMENT/ADDENDUM**

Contractor shall at all times comply with the National Standards promulgated under the Prison Rape Elimination Act (42 U.S.C. §15601, et seq.), which are found at 28 CFR 115.5 to 115.93, inclusive, and the provisions of KDOC Internal Management Policy and Procedure (IMPP) 10-103, in regard to any of its employees who have or may reasonably be expected to have contact with inmates in delivering services and/or goods pursuant to this agreement.

In particular, Contractor shall:

- (1) perform criminal background records checks as described in 28 CFR 115.17 prior to hiring any such employee, and during the employee's tenure with Contractor at the intervals set forth therein, and shall also inquire of prospective hires and employees considered for promotion as to their involvement in any prior events involving sexual misconduct set forth at subsection (a) thereof;
- (2) promptly make its employees available for orientation and periodic training provided by KDOC in regard to the obligations and requirements imposed by said Act and National Standards, as required by 28 CFR 115.32 and IMPP 10-103, Sec. III;
- (3) promptly make available upon request to KDOC in any sexual abuse incident review conducted pursuant to 28 CFR 115.86 in which any of Contractor's employees is involved as the target of the investigation and review, or a witness thereto, any of its employees for interview by the Sexual Abuse Incident Review Board, as well as any pertinent records regarding the incident in question; and
- (4) promptly make available upon request any records necessary for KDOC to meet the requirements for data collection, review for corrective action, and audits, as set forth at 28 CFR 115.87, 115.88, 115.93.

Contractor further acknowledges that KDOC must bar any contract employee found to have engaged in sexual abuse from its facilities' premises, as well as report any such employee to law enforcement agencies and relevant licensing bodies, and that KDOC otherwise must take appropriate remedial measures in response to any violation of its sexual abuse or sexual harassment policies, as set forth at 28 CFR 115.77. Contractor further acknowledges and agrees that KDOC, in its sole discretion, may bar any contract employee under investigation for alleged sexual abuse or sexual harassment during the investigation.